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IN THE SENATE OF THE UNITED STATES

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NOVEMBER 8 (legislative day, NOVEMBER 2), 1993

Committee discharged

AN ACT

To amend title 38, United States Code, to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Uniformed Services
5 Employment and Reemployment Rights Act of 1993”.

6 **SEC. 2. REVISION OF CHAPTER 43 OF TITLE 38.**

7 (a) RESTATEMENT AND IMPROVEMENT OF EMPLOY-
8 MENT AND REEMPLOYMENT RIGHTS.—Chapter 43 of title
9 38, United States Code, is amended to read as follows:

1 **“CHAPTER 43—EMPLOYMENT AND REEMPLOY-**
 2 **MENT RIGHTS OF MEMBERS OF THE UNI-**
 3 **FORMED SERVICES**

“SUBCHAPTER I—PURPOSES, RELATION TO OTHER LAW, AND
 DEFINITIONS

“Sec.

“4301. Purposes; sense of Congress.

“4302. Relation to other law and plans or agreements.

“4303. Definitions.

“SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS
 AND LIMITATIONS; PROHIBITIONS

“4311. Discrimination against persons who serve in the uniformed services and
 acts of reprisal prohibited.

“4312. Reemployment rights of persons who serve in the uniformed services.

“4313. Reemployment positions.

“4314. Reemployment by the Federal Government.

“4315. Rights, benefits, and obligations of persons absent from employment for
 service in a uniformed service.

“4316. Employee pension benefit plans.

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“SUBCHAPTER III—PROCEDURES FOR ASSISTANCE,
 ENFORCEMENT, AND INVESTIGATIONS

“4321. Assistance in obtaining employment or reemployment.

“4322. Enforcement of employment or reemployment rights.

“4323. Conduct of investigation; subpoenas.

“SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

“4331. Regulations.

“4332. Reports.

“4333. Outreach.

4 “SUBCHAPTER I—PURPOSES, RELATION TO
 5 OTHER LAW, AND DEFINITIONS

6 **“§ 4301. Purposes; sense of Congress**

7 “(a) The purposes of this chapter are—

8 “(1) to encourage noncareer service in the uni-
 9 formed services by eliminating or minimizing the dis-
 10 advantages to civilian careers and employment which
 11 can result from such service;

1 “(2) to minimize the disruption to the lives of
2 persons performing service in the uniformed services
3 as well as to their employers, their fellow employees,
4 and their communities, by providing for the prompt
5 reemployment of such persons upon their completion
6 of such service under honorable conditions; and

7 “(3) to prohibit discrimination against persons
8 because of their service in the uniformed services.

9 “(b) It is the sense of Congress that the Federal Gov-
10 ernment should be a model employer in carrying out the
11 reemployment practices provided for in this chapter.

12 **“§ 4302. Relation to other law and plans or agree-**
13 **ments**

14 “(a) Nothing in this chapter shall supersede, nullify,
15 or diminish any Federal or State law (including any local
16 law or ordinance) or any contract, practice, policy, agree-
17 ment, plan, or other matter provided by an employer which
18 establishes rights or benefits which are greater than or
19 in addition to those provided in this chapter.

20 “(b) This chapter supersedes State laws (including
21 any local law or ordinance), employer practices, policies,
22 agreements, and plans, and other matters that reduce,
23 limit, or eliminate in any manner rights or benefits pro-
24 vided by this chapter, including the establishment of addi-
25 tional prerequisites to the exercise of such rights.

1 **“§ 4303. Definitions**

2 “For the purposes of this chapter:

3 “(1) The term ‘Attorney General’ means the
4 Attorney General of the United States or any person
5 designated by the Attorney General to carry out a
6 responsibility of the Attorney General under this
7 chapter.

8 “(2) The term ‘benefit’, ‘benefit of employ-
9 ment’, or ‘rights and benefits’ means any aspect of
10 the employment relationship, other than wages or
11 salary for work performed, provided by contract or
12 employer practice or custom, that offers advantage,
13 profit, privilege, gain, status, account, or interest
14 and includes, but is not limited to, pension plans
15 and payments, insurance coverage and awards, em-
16 ployee stock ownership plans, bonuses, severance
17 pay, supplemental unemployment benefits, vacations,
18 and selection of work hours or locations of employ-
19 ment.

20 “(3) The term ‘employee’ means any person
21 employed by an employer.

22 “(4)(A) Except as provided in subparagraphs
23 (B) and (C), the term ‘employer’ means any person,
24 institution, organization, or other entity that pays
25 salary or wages for work performed or that has con-
26 trol over employment opportunities, including—

1 “(i) a person, institution, organization, or
2 other entity to whom the employer has dele-
3 gated the performance of employment-related
4 responsibilities;

5 “(ii) the Federal Government;

6 “(iii) a State;

7 “(iv) any successor in interest to a person,
8 institution, organization, or other entity re-
9 ferred to in this subparagraph; and

10 “(v) a person, institution, organization, or
11 other entity that has denied initial employment
12 in violation of section 4311.

13 “(B) In the case of a National Guard techni-
14 cian employed under section 709 of title 32, the
15 term ‘employer’ means the adjutant general of the
16 State in which the technician is employed.

17 “(C) Except as an actual employer of employ-
18 ees, an employee pension benefit plan described in
19 section 3(2) of the Employee Retirement Income Se-
20 curity Act of 1974 (29 U.S.C. 1002(2)) shall be
21 deemed to be an employer only with respect to the
22 obligation to provide benefits described in section
23 4316.

24 “(5) The term ‘Federal Government’ includes
25 the executive branch, the judicial branch, and the

1 legislative branch, with the executive branch includ-
2 ing—

3 “(A) any department, administration,
4 agency, commission, board, or independent es-
5 tablishment in, or other part of, the executive
6 branch (including any executive agency as de-
7 fined in section 105 of title 5);

8 “(B) the United States Postal Service and
9 the Postal Rate Commission;

10 “(C) any nonappropriated fund activity of
11 the United States; and

12 “(D) any corporation wholly owned by the
13 United States.

14 “(6) The term ‘health plan’ means an insurance
15 policy or contract, medical or hospital service agree-
16 ment, membership or subscription contract, or other
17 arrangement under which health services for individ-
18 uals are provided or the expenses of such services
19 are paid.

20 “(7) The term ‘notice’ means (with respect to
21 subchapter II) any written or verbal notification of
22 an obligation or intention to perform service in the
23 uniformed services provided to an employer by the
24 employee who will perform such service or by the

1 uniformed service in which such service is to be per-
2 formed.

3 “(8) The term ‘other than a temporary posi-
4 tion’ means a position of employment as to which
5 there is a reasonable expectation that it will continue
6 indefinitely.

7 “(9) The term ‘qualified’ means having the
8 ability to perform the essential tasks of an employ-
9 ment position.

10 “(10) The term ‘reasonable efforts’ means ac-
11 tions, including training provided by an employer,
12 that do not create an undue hardship on the em-
13 ployer.

14 “(11) Notwithstanding section 101, the term
15 ‘Secretary’ means the Secretary of Labor or any
16 person designated by such Secretary to carry out an
17 activity under this chapter.

18 “(12) The term ‘seniority’ means longevity in
19 employment together with any benefits of employ-
20 ment which accrue with, or are determined by, lon-
21 gevity in employment.

22 “(13) The term ‘service in the uniformed serv-
23 ices’ means the performance of duty on a voluntary
24 or involuntary basis in a uniformed service under
25 competent authority and includes active duty, active

1 duty for training, initial active duty for training, in-
2 active duty training, full-time National Guard duty,
3 and a period for which a person is absent from a po-
4 sition of employment for the purpose of an examina-
5 tion to determine the fitness of the person to per-
6 form any such duty.

7 “(14) The term ‘State’ means each of the sev-
8 eral States of the United States, the District of Co-
9 lumbia, the Commonwealth of Puerto Rico, Guam,
10 the Virgin Islands, and other territories of the Unit-
11 ed States (including the agencies and political sub-
12 divisions thereof).

13 “(15)(A) The term ‘undue hardship’ means an
14 action requiring significant difficulty or expense,
15 when considered in light of the factors set forth in
16 subparagraph (B).

17 “(B) In determining whether an action would
18 impose an undue hardship on an employer, factors
19 to be considered include—

20 “(i) the nature and cost of the action need-
21 ed under this chapter;

22 “(ii) the overall financial resources of the
23 facility or facilities involved in the provision of
24 the action; the number of persons employed at
25 such facility; the effect on expenses and re-

1 sources, or the impact otherwise of such action
2 upon the operation of the facility;

3 “(iii) the overall financial resources of the
4 employer; the overall size of the business of an
5 employer with respect to the number of its em-
6 ployees; the number, type, and location of its
7 facilities; and

8 “(iv) the type of operation or operations of
9 the employer, including the composition, struc-
10 ture, and functions of the work force of such
11 employer; the geographic separateness, adminis-
12 trative, or fiscal relationship of the facility or
13 facilities in question to the employer.

14 “(16) The term ‘uniformed services’ means the
15 Armed Forces, the Army National Guard and the
16 Air National Guard when engaged in active duty for
17 training, inactive duty training, or full-time National
18 Guard duty, the commissioned corps of the Public
19 Health Service, and any other category of persons
20 designated by the President in time of war or emer-
21 gency.

1 “SUBCHAPTER II—EMPLOYMENT AND REEM-
2 PLOYMENT RIGHTS AND LIMITATIONS;
3 PROHIBITIONS

4 **“§4311. Discrimination against persons who serve in**
5 **the uniformed services and acts of re-**
6 **prisal prohibited**

7 “(a) A person who is a member of, applies to be a
8 member of, performs, has performed, applies to perform,
9 or has an obligation to perform service in a uniformed
10 service shall not be denied initial employment, reemploy-
11 ment, retention in employment, promotion, or any benefit
12 of employment by an employer on the basis of that mem-
13 bership, application for membership, service, application
14 for service, or obligation.

15 “(b) An employer shall be considered to have denied
16 a person initial employment, reemployment, retention in
17 employment, promotion, or a benefit of employment in vio-
18 lation of this section if the person’s membership, applica-
19 tion for membership, service, application for service, or ob-
20 ligation for service in the uniformed services is a motivat-
21 ing factor in the employer’s action, unless the employer
22 can demonstrate that the action would have been taken
23 in the absence of such membership, application for mem-
24 bership, service, application for service, or obligation.

1 “(c)(1) An employer may not discriminate in employ-
2 ment against or take any adverse employment action
3 against any person because such person has taken an ac-
4 tion to enforce a protection afforded any person under this
5 chapter, has testified or otherwise made a statement in
6 or in connection with any proceeding under this chapter,
7 has assisted or otherwise participated in an investigation
8 under this chapter, or has exercised a right provided for
9 in this chapter.

10 “(2) The prohibition in paragraph (1) shall apply
11 with respect to a person regardless of whether that person
12 has performed service in the uniformed services.

13 **“§4312. Reemployment rights of persons who serve**
14 **in the uniformed services**

15 “(a) Subject to subsections (b), (c), and (d) and to
16 section 4317, any person who is absent from a position
17 of employment (other than a temporary position) by rea-
18 son of service in the uniformed services shall be entitled
19 to the reemployment rights and benefits and other employ-
20 ment benefits of this chapter if—

21 “(1) the person (or an appropriate officer of the
22 uniformed service in which such service is per-
23 formed) has given advance written or verbal notice
24 of such service to such person’s employer;

1 “(2) except as provided in subsection (c), the
2 cumulative length of the absence and of all previous
3 absences from a position of employment with that
4 employer by reason of service in the uniformed serv-
5 ices does not exceed five years; and

6 “(3) except as provided in subsection (f), the
7 person reports to, or submits an application for re-
8 employment to, such employer in accordance with
9 the provisions of subsection (e).

10 “(b) No notice is required under subsection (a)(1) if
11 the giving of such notice is precluded by military necessity
12 or, under all of the relevant circumstances, the giving of
13 such notice is otherwise impossible or unreasonable. A de-
14 termination of military necessity for the purposes of this
15 subsection shall be made pursuant to regulations pre-
16 scribed by the Secretary of Defense and shall not be sub-
17 ject to judicial review.

18 “(c) Subsection (a) shall apply if such person’s cumu-
19 lative period of service in the uniformed services, with re-
20 spect to the employer relationship for which a person seeks
21 reemployment, does not exceed five years, except that any
22 such period of service shall not include any service—

23 “(1) that is required, beyond five years, to com-
24 plete an initial period of obligated service;

1 “(2) during which such person was unable to
2 obtain orders releasing such person from a period of
3 service in the uniformed services before the expira-
4 tion of such five-year period and such inability was
5 through no fault of such person;

6 “(3) performed as required pursuant to section
7 270 of title 10, under section 502(a) or 503 of title
8 32, or to fulfill additional training requirements de-
9 termined and certified in writing by the Secretary
10 concerned to be necessary for professional develop-
11 ment or for completion of skill training or retrain-
12 ing; or

13 “(4) performed by a member of a uniformed
14 service who is—

15 “(A) ordered to or retained on active duty
16 under section 672(a), 672(g), 673, 673b, 673c,
17 or 688 of title 10;

18 “(B) ordered to or retained on active duty
19 (other than for training) under any provision of
20 law during a war or during a national emer-
21 gency declared by the President or the Con-
22 gress;

23 “(C) ordered to active duty (other than for
24 training) in support, as determined by the Sec-
25 retary concerned, of an operational mission for

1 which personnel have been ordered to active
2 duty under section 673b of title 10;

3 “(D) ordered to active duty in support, as
4 determined by the Secretary concerned, of a
5 critical mission or requirement of the uniformed
6 services; or

7 “(E) called into Federal service as a mem-
8 ber of the National Guard under chapter 15 of
9 title 10 or under section 3500 or 8500 of title
10 10.

11 “(d)(1) An employer is not required to reemploy a
12 person under this chapter if—

13 “(A) the employer’s circumstances have so
14 changed as to make such reemployment impossible
15 or unreasonable, or

16 “(B) in the case of a person entitled to reem-
17 ployment under section 4313 (a)(3), (a)(4), or
18 (b)(2)(B), such employment would impose an undue
19 hardship on the operation of the employer.

20 “(2) In any administrative or judicial proceeding in-
21 volving an issue of whether—

22 “(A) any reemployment referred to in para-
23 graph (1) is impossible or unreasonable because of
24 a change in an employer’s circumstances, or

1 “(B) any accommodation, training, or effort re-
2 ferred to in section 4313 (a)(3), (a)(4), or (b)(2)(B)
3 would impose an undue hardship on the operation of
4 the business of the employer,
5 the employer shall have the burden of proving the impos-
6 sibility or unreasonableness or undue hardship.

7 “(e)(1) Subject to paragraph (2), a person referred
8 to in subsection (a) shall, upon the completion of a period
9 of service in the uniformed services, notify the employer
10 referred to in such subsection of the person’s intent to
11 return to a position of employment with such employer
12 as follows:

13 “(A) In the case of a person whose period of
14 service in the uniformed services was less than 31
15 days, by reporting to the employer—

16 “(i) not later than the beginning of the
17 first full regularly scheduled work period on the
18 first full calendar day following the completion
19 of the period of service and the expiration of
20 eight hours after a period allowing for the safe
21 transportation of the person from the place of
22 that service to the person’s residence; or

23 “(ii) as soon as possible after the expira-
24 tion of the eight-hour period referred to in
25 clause (i), if reporting within the period re-

1 ferred to in such clause is impossible or unrea-
2 sonable through no fault of the person.

3 “(B) In the case of a person who is absent from
4 a position of employment for a period of any length
5 for the purposes of an examination to determine the
6 person’s fitness to perform service in the uniformed
7 services, by reporting in the manner and time re-
8 ferred to in subparagraph (A).

9 “(C) In the case of a person whose period of
10 service in the uniformed services was for more than
11 30 days but less than 181 days, by submitting an
12 application for reemployment with the employer not
13 later than 14 days after the completion of the period
14 of service or as soon as possible after such 14-day
15 period if submitting such application within such pe-
16 riod is impossible or unreasonable through no fault
17 of the person.

18 “(D) In the case of a person whose period of
19 service in the uniformed services was for more than
20 180 days, by submitting an application for reemploy-
21 ment with the employer not later than 90 days after
22 the completion of the period of service or as soon as
23 possible after such 90-day period if submitting such
24 application within such period is impossible or un-
25 reasonable through no fault of the person.

1 “(2)(A) A person who is hospitalized for, or con-
2 valescing from, an illness or injury incurred in, or aggra-
3 vated by, the performance of a period of service in the
4 uniformed services shall, at the end of the period that is
5 necessary for the person to recover from such illness or
6 injury submit an application for reemployment with such
7 employer. Such period of recovery may not exceed two
8 years, except as provided in subparagraph (B).

9 “(B) Such two-year period shall be extended by the
10 minimum time required to accommodate the cir-
11 cumstances beyond such person’s control which make re-
12 porting within the time limit specified in subparagraph
13 (A) impossible or unreasonable.

14 “(f) A person who fails to report for employment or
15 reemployment within the time limits specified in sub-
16 section (e) does not automatically forfeit such person’s
17 right under subsection (a) but shall be subject to the con-
18 duct rules, established policy, and general practices of the
19 employer pertaining to explanations and discipline with re-
20 spect to absence from scheduled work.

21 “(g)(1) A person who submits an application for re-
22 employment in accordance with subparagraph (C) or (D)
23 of subsection (e)(1) or subsection (e)(2) shall provide to
24 the person’s employer (upon the request of such employer)
25 documentation to establish that—

1 “(A) the person’s application is timely;

2 “(B) the person has not exceeded the service
3 limitations set forth in subsection (a)(2) (except as
4 permitted under subsection (c)); and

5 “(C) the person’s entitlement to the benefits
6 under this chapter has not terminated under section
7 4317.

8 “(2) Documentation of any matter referred to in
9 paragraph (1) that satisfies regulations prescribed by the
10 Secretary shall satisfy the documentation requirements in
11 such paragraph.

12 “(3) The failure of a person to provide documentation
13 that satisfies regulations prescribed pursuant to para-
14 graph (2) shall not be a basis for denying reemployment
15 in accordance with the provisions of this chapter if the
16 failure occurs because such documentation does not exist
17 or is not readily available at the time of the request of
18 the employer. If, after such reemployment, documentation
19 becomes available that establishes that such person does
20 not meet one or more of the requirements referred to in
21 subparagraphs (A) through (C) of paragraph (1), the em-
22 ployer of such person may terminate the employment of
23 the person and the provision of any rights or benefits af-
24 forded the person under this chapter.

1 “(4) It shall be unlawful for an employer to delay
2 or attempt to defeat a reemployment obligation by de-
3 manding documentation that does not then exist or is not
4 then readily available.

5 “(h) The right of a person to reemployment under
6 this section shall not entitle such person to retention, pref-
7 erence, or displacement rights over any person with a su-
8 perior claim under the provisions of title 5, United States
9 Code, relating to veterans and other preference eligibles.

10 “(i) In any determination of a person’s entitlement
11 to protection under this chapter, the timing, frequency,
12 and duration of the person’s training or service or the na-
13 ture of such training or service (including voluntary serv-
14 ice) in the uniformed services shall not be a basis for deny-
15 ing protection of such training or service if the service
16 does not exceed the limitations set forth in subsection (c),
17 and the notice requirements established in subsection
18 (a)(1) and the notification requirements established in
19 subsection (e) are met.

20 **“§ 4313. Reemployment positions**

21 “(a) Subject to subsection (b) in the case of any em-
22 ployee and subject to section 4314 in the case of reemploy-
23 ment by the Federal Government, a person entitled to re-
24 employment under section 4312 upon completion of a pe-
25 riod of service in the uniformed services shall be promptly

1 reemployed in a position of employment in accordance
2 with the following priorities:

3 “(1) Except as provided in paragraphs (3) and
4 (4), in the case of a person whose period of service
5 in the uniformed services was for less than 91
6 days—

7 “(A) in the position of employment in
8 which the person would have been employed if
9 the continuous employment of such person with
10 the employer had not been interrupted by such
11 service, the duties of which the person is quali-
12 fied to perform; or

13 “(B) in the position of employment in
14 which the person was employed on the date of
15 the commencement of the service in the uni-
16 formed services, only if the person is not quali-
17 fied to perform the duties of the position re-
18 ferred to in subparagraph (A) after reasonable
19 efforts by the employer to qualify the person.

20 “(2) Except as provided in paragraphs (3) and
21 (4), in the case of a person whose period of service
22 in the uniformed services was for more than 90
23 days—

24 “(A) in the position of employment in
25 which the person would have been employed if

1 the continuous employment of such person with
2 the employer had not been interrupted by such
3 service, or a position of like seniority, status
4 and pay, the duties of which the person is quali-
5 fied to perform; or

6 “(B) in the position of employment in
7 which the person was employed on the date of
8 the commencement of the service in the uni-
9 formed services, or a position of like seniority,
10 status and pay, the duties of which the person
11 is qualified to perform, only if the person is not
12 qualified to perform the duties of a position re-
13 ferred to in subparagraph (A) after reasonable
14 efforts by the employer to qualify the person.

15 “(3) In the case of a person who has a disabil-
16 ity incurred in, or aggravated by, a period of service
17 in the uniformed services, and if, after reasonable ef-
18 forts by the employer to accommodate the disability,
19 such person is not qualified due to such disability to
20 be employed in the position of employment in which
21 the person would have been employed if the continu-
22 ous employment of such person with the employer
23 had not been interrupted by such service—

24 “(A) in any other position which is equiva-
25 lent in seniority, status, and pay, the duties of

1 which the person is qualified to perform or
2 would become qualified to perform with reason-
3 able efforts by the employer; or

4 “(B) if not employed under subparagraph
5 (A), in a position which is the nearest approxi-
6 mation to a position referred to in subpara-
7 graph (A) in terms of seniority, status, and pay
8 consistent with circumstances of such person’s
9 case.

10 “(4) In the case of a person who is not quali-
11 fied to be employed in the position of employment in
12 which the person would have been employed if the
13 continuous employment of such person with the em-
14 ployer had not been interrupted by such service or
15 in the position of employment in which such person
16 was employed on the date of the commencement of
17 the service in the uniform services for any reason
18 other than disability incurred in, or aggravated by,
19 a period of service in the uniformed services and
20 who cannot become qualified with reasonable efforts
21 by the employer, in any other position of lesser sta-
22 tus and pay which such person is qualified to per-
23 form, with full seniority.

24 “(b)(1) If two or more persons are entitled to reem-
25 ployment under section 4312 in the same position of em-

1 ployment and more than one of them has reported for such
2 reemployment, the person who left the position first shall
3 have the prior right to reemployment in that position.

4 “(2) Any person entitled to reemployment under sec-
5 tion 4312 who is not reemployed in a position of employ-
6 ment by reason of paragraph (1) shall be entitled to reem-
7 ployment as follows:

8 “(A) Except as provided in subparagraph (B),
9 in any other position of employment referred to in
10 subsection (a)(1) or (a)(2), as the case may be (in
11 the order of priority set out in the applicable sub-
12 section), that provides a similar status and pay to a
13 position of employment referred to in paragraph (1)
14 of this subsection, consistent with circumstances of
15 such person’s case, with full seniority.

16 “(B) In the case of a person who has a disabil-
17 ity incurred in, or aggravated by, a period of service
18 in the uniformed services that requires reasonable
19 efforts by the employer for the person to be able to
20 perform the duties of the position of employment, in
21 any other position referred to in subsection (a)(3)
22 (in the order of priority set out in that subsection)
23 that provides a similar status and pay to a position
24 referred to in paragraph (1) of this subsection, con-

1 sistent with circumstances of such person's case,
2 with full seniority.

3 **“§ 4314. Reemployment by the Federal Government**

4 “(a) Except as provided in subsections (b), (c), and
5 (d), if a person is entitled to reemployment by the Federal
6 Government under section 4312, such person shall be re-
7 employed in a position of employment as described in sec-
8 tion 4313.

9 “(b) If the employer of a person described in sub-
10 section (a) was, at the time such person entered service
11 in the uniformed services, an agency in the executive
12 branch, and the Director of the Office of Personnel Man-
13 agement determines that—

14 “(1) such employer no longer exists and its
15 functions have not been transferred to another part
16 of the executive branch; or

17 “(2) it is impossible or unreasonable for such
18 employer to reemploy such person,

19 the Director shall identify an alternative position of like
20 seniority, status, and pay for which such person is quali-
21 fied in another part of the executive branch, and the
22 Director shall cause employment in such position to be
23 offered to such person.

24 “(c) If the employer of a person described in sub-
25 section (a) was, at the time such person entered service

1 in the uniformed services, a part of the judicial branch
2 or the legislative branch of the Federal Government, and
3 such employer determines that—

4 “(1) it is impossible or unreasonable for such
5 employer to reemploy such person; and

6 “(2) such person is otherwise eligible to acquire
7 a status for transfer to a position in the competitive
8 service in accordance with section 3304(c) of title 5,
9 such person shall, upon application to the Director of the
10 Office of Personnel Management, be considered for and
11 offered employment in an alternative position in the execu-
12 tive branch on the same basis as described in subsection
13 (b).

14 “(d) If the adjutant general of a State determines
15 that it is impossible or unreasonable to reemploy a person
16 who was a National Guard technician employed under sec-
17 tion 709 of title 32, and such person is otherwise eligible
18 to acquire a status for transfer to a position in the com-
19 petitive service in accordance with section 3304(d) of title
20 5, such person shall, upon application to the Director of
21 the Office of Personnel Management, be considered for
22 and offered employment in an alternative position in the
23 executive branch of the Federal Government on the same
24 basis as described in subsection (b).

1 **“§4315. Rights, benefits, and obligations of persons**
2 **absent from employment for service in a**
3 **uniformed service**

4 “(a) A person who is reemployed under this chapter
5 is entitled to the seniority and other rights and benefits
6 determined by seniority that the person had on the date
7 of the commencement of service in the uniformed services
8 plus the additional seniority and rights and benefits that
9 such person would have attained if the person had re-
10 mained continuously employed.

11 “(b) A person who performs service in the uniformed
12 services is considered to be on furlough or leave of absence
13 while in the uniformed services and is also entitled to such
14 other rights and benefits, not determined by seniority, re-
15 lating to other employees on furlough or leave of absence
16 which were in effect by contract, practice, policy, agree-
17 ment, or plan at the commencement of such period of serv-
18 ice or were established while such person is performing
19 such service. Such person may be required to pay the em-
20 ployee cost, if any, of any funded benefit continued pursu-
21 ant to the preceding sentence to the extent other employ-
22 ees on furlough or leave of absence are so required.

23 “(c)(1) Notwithstanding subsection (b), a person who
24 performs service in the uniformed services shall, at such
25 person’s request, continue to be covered by any insurance
26 provided by such employer for up to 18 months. Such per-

1 son may be required to pay the entire cost of any benefit
2 continued pursuant to the preceding sentence, except that
3 in the case of persons ordered to training or service for
4 fewer than 31 days, such person may be required to pay
5 only the employee share, if any, of the cost of such benefit.

6 “(2) In the case of employer-sponsored health bene-
7 fits, an exclusion or waiting period may not be imposed
8 in connection with coverage of a health or physical condi-
9 tion of a person entitled to participate in these benefits,
10 either under paragraph (1) or upon reinstatement, or in
11 connection with a health or physical condition of any other
12 person who is covered by the benefit by reason of the cov-
13 erage of such person, if—

14 “(A) the condition arose before or during that
15 person’s period of training or service in the uni-
16 formed services;

17 “(B) an exclusion or waiting period would not
18 have been imposed for the condition during a period
19 of coverage resulting from participation by such per-
20 son in the benefits; and

21 “(C) the condition of such person has not been
22 determined by the Secretary of Veterans Affairs to
23 be service-connected.

1 “(d) A person who is reemployed by an employer
2 under this chapter shall not be discharged from such em-
3 ployment, except for cause—

4 “(1) if such person’s period of service was 181
5 days or more, within one year;

6 “(2) if such person’s period of service was 31
7 days or more but less than 181 days, within six
8 months; or

9 “(3) if such person’s period of service was less
10 than 31 days, within a period of time that is equal
11 to the period of service concerned.

12 “(e) Any person who is absent from or leaves a posi-
13 tion (other than a temporary position) in the employ of
14 any employer for voluntary or involuntary service in the
15 uniformed services may utilize, with respect to the em-
16 ployer and during any period of such service, accrued or
17 other leave which the person could have utilized if the per-
18 son had remained in such position.

19 **“§ 4316. Employee pension benefit plans**

20 “(a)(1)(A) Except as provided in subparagraph (B),
21 in the case of a right provided pursuant to an employee
22 pension benefit plan described in section 3(2) of the Em-
23 ployee Retirement Income Security Act of 1974 (29
24 U.S.C. 1002(2)) or a right provided under any Federal
25 or State law governing pension benefits for governmental

1 employees, the right to pension benefits of a person reem-
2 ployed under this chapter shall be determined under this
3 section.

4 “(B) In the case of benefits under the Thrift Savings
5 Plan, the rights of a person reemployed under this chapter
6 shall be those rights provided in section 8432b of title 5.
7 The first sentence of this subparagraph shall not be con-
8 strued to affect any other right or benefit under this
9 chapter.

10 “(2)(A) A person reemployed under this chapter shall
11 be treated as not having incurred a break in service with
12 the employer or employers maintaining the plan by reason
13 of such person’s period or periods of service in the uni-
14 formed services.

15 “(B) Each period served by a person in the uniformed
16 services shall, upon reemployment under this chapter, be
17 deemed to constitute service with the employer or employ-
18 ers maintaining the plan for purposes of determining the
19 nonforfeitability of the person’s accrued benefits and for
20 the purpose of determining the accrual of benefits under
21 the plan.

22 “(b)(1)(A) An employer reemploying a person under
23 this chapter shall be liable to an employee pension benefit
24 plan for funding any obligation of the plan to provide the
25 benefits described in subsection (a)(2). For purposes of

1 determining the amount of such liability and for purposes
2 of section 515 of the Employee Retirement Income Secu-
3 rity Act of 1974 (29 U.S.C. 1145) or any similar Federal
4 or State law governing pension benefits for governmental
5 employees, service in the uniformed services that is
6 deemed under subsection (a) to be service with the em-
7 ployer shall be deemed to be service with the employer
8 under the terms of the plan or any applicable collective
9 bargaining agreement. In the case of a multiemployer
10 plan, as defined in section 3(37) of the Employee Retire-
11 ment Income Security Act of 1974 (29 U.S.C. 1002(37)),
12 any liability of the plan described in this paragraph shall
13 be allocated by the plan in such manner as the sponsor
14 maintaining the plan shall provide.

15 “(B) An employee entitled to pension benefits under
16 this chapter, with respect to a period of service described
17 in subsection (a)(2)(B)—

18 “(i) shall have earnings credited with respect to
19 an employer contribution in the same manner and to
20 the same extent as earnings are credited to other
21 employees during the period of service, subject to
22 paragraph (3), irrespective of when the contribution
23 is made;

24 “(ii) shall have allocated the amount of—

1 “(I) any employer contribution that was
2 voluntary; and

3 “(II) any employer contribution the total
4 amount of which was determined without ref-
5 erence to the number of, or compensation of,
6 plan participants before being allocated to the
7 accounts of participants; and

8 “(iii) may have allocated the amount of any for-
9 feiture,

10 in the same manner and to the same extent the allocation
11 occurs for other employees during the period of service.

12 “(2) A person reemployed under this chapter shall
13 be entitled to accrued benefits pursuant to subsection (a)
14 that are contingent on the making of, or derived from,
15 employee contributions or elective deferrals (as defined in
16 section 402(g)(3) of the Internal Revenue Code of 1986)
17 only to the extent the person makes payment to the plan
18 with respect to such contributions or deferrals. No such
19 payment may exceed the amount the person would have
20 been permitted or required to contribute had the person
21 remained continuously employed by the employer through-
22 out the period of service described in subsection (a)(2)(B).
23 Any payment to the plan described in this paragraph shall
24 be made during any reasonable continuous period (begin-

1 ning with the date of reemployment) as the employer and
2 the person may agree.

3 “(3) For purposes of computing an employer’s liabil-
4 ity under paragraph (1)(A) or the employee’s contribu-
5 tions under paragraph (2), the employee’s compensation
6 during the period of service described in subsection
7 (a)(2)(B)—

8 “(A) shall be computed at the same rate as the
9 employee received from the employer immediately
10 before such period; or

11 “(B) if the employee’s compensation was not
12 based on a fixed rate, shall be computed on the basis
13 of the employee’s average rate of compensation dur-
14 ing the 12-month period immediately preceding such
15 period (or, if shorter, the period of employment im-
16 mediately preceding such period).

17 “(c) Any employer who reemploys a person under this
18 chapter and who is an employer contributing to a multiem-
19 ployer plan, as defined in section 3(37) of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1002(37)), under which benefits are or may be payable
22 to such person by reason of the obligations set forth in
23 this chapter, shall, within 30 days after the date of such
24 reemployment, provide information, in writing, of such re-
25 employment to the administrator of such plan.

1 **“§ 4317. Character of service**

2 “A person’s entitlement to the benefits of this chapter
3 by reason of the service of such person in one of the uni-
4 formed services terminates upon the occurrence of any of
5 the following events:

6 “(1) A separation of such person from such
7 uniformed service with a dishonorable or bad con-
8 duct discharge.

9 “(2) A separation of such person from such
10 uniformed service under other than honorable condi-
11 tions, as characterized pursuant to regulations pre-
12 scribed by the Secretary concerned.

13 “(3) A dismissal of such person permitted
14 under section 1161(a) of title 10.

15 “(4) A dropping of such person from the rolls
16 pursuant to section 1161(b) of title 10.

17 “SUBCHAPTER III—PROCEDURES FOR ASSIST-
18 ANCE, ENFORCEMENT, AND INVESTIGA-
19 TIONS

20 **“§ 4321. Assistance in obtaining employment or reem-**
21 **ployment**

22 “The Secretary (through the Veterans’ Employment
23 and Training Service) shall provide assistance to any per-
24 son with respect to employment and reemployment rights
25 and benefits to which such person is entitled under this
26 chapter. In providing such assistance, the Secretary may

1 request the assistance of existing Federal and State agen-
2 cies engaged in similar or related activities and utilize the
3 assistance of volunteers.

4 **“§ 4322. Enforcement of employment or reemploy-**
5 **ment rights**

6 “(a)(1) A person who claims that—

7 “(A) such person is entitled under this chapter
8 to employment or reemployment rights or benefits
9 with respect to employment by an employer; and

10 “(B)(i) such employer has failed or refused, or
11 is about to fail or refuse, to comply with the provi-
12 sions of this chapter; or

13 “(ii) in the case that the employer is the Fed-
14 eral Government, such employer or the Office of
15 Personnel Management has failed or refused, or is
16 about to fail or refuse, to comply with the provisions
17 of this chapter,

18 may file a complaint with the Secretary in accordance with
19 subsection (b), and the Secretary shall investigate such
20 complaint.

21 “(2) In the case that the employer is the Federal
22 Government, subsection (a) of section 4323 shall be appli-
23 cable to such investigation but not subsections (b) and (c)
24 of such section.

1 “(3) This subsection does not apply to any action re-
2 lating to benefits to be provided by the Thrift Savings
3 Plan.

4 “(b)(1) A person described in subsection (a) may file
5 a complaint in accordance with paragraph (2) and apply
6 to the Secretary for assistance in asserting that complaint.

7 “(2) Such complaint shall be in writing, be in such
8 form as the Secretary may prescribe, include the name
9 and address of the employer against whom the complaint
10 is filed, and contain a summary of the allegations that
11 form the basis for the complaint.

12 “(3) Before the receipt of a written complaint, the
13 Secretary shall, upon request, provide technical assistance
14 to the potential claimant and, if the Secretary determines
15 it appropriate, to such claimant’s employer.

16 “(c)(1)(A) Except as provided in paragraph (2), if
17 the Secretary, after investigation, is reasonably satisfied
18 that the employer has failed to comply with the provisions
19 of this chapter, if efforts to obtain voluntary compliance
20 are not successful, and if the claimant requests in writing
21 that the claim be referred for litigation, the Secretary shall
22 refer the case to the Attorney General. If the Attorney
23 General is reasonably satisfied that the person requesting
24 representation is entitled to the rights or benefits sought,
25 the Attorney General shall appear and act as attorney for

1 the claimant in the filing of a complaint and other appro-
2 priate motions and pleadings and the prosecution thereof
3 in the district courts of the United States and on appeal.

4 “(B) If the Attorney General declines to represent a
5 person after receiving a referral from the Secretary or if
6 a person chooses not to apply to the Secretary for assist-
7 ance or to utilize the Attorney General for representation
8 under this section, such person may be represented before
9 the district court or on appeal by counsel of the person’s
10 choice.

11 “(2)(A) In the case where the employer is the Federal
12 Government, if the Secretary, after investigation, is rea-
13 sonably satisfied that the employer has failed to comply
14 with the provisions of this chapter, if efforts to obtain vol-
15 untary compliance are not successful, and if the claimant
16 requests in writing that the claim be referred for litigation,
17 the case shall be referred to the Office of the Special
18 Counsel, litigation shall be before the Merit Systems Pro-
19 tection Board, and if the Special Counsel is reasonably
20 satisfied that the person requesting representation is enti-
21 tled to the rights or benefits sought, the Special Counsel
22 shall appear and act as attorney for the claimant in filing
23 an appeal to the Merit Systems Protection Board and in
24 pursuing that appeal.

1 “(B) If the Special Counsel declines to represent a
2 person after receiving a referral from the Secretary or if
3 a person chooses not to apply to the Secretary for assist-
4 ance or to utilize the Special Counsel for representation
5 under this section, such person may be represented before
6 the Merit Systems Protection Board or on appeal by coun-
7 sel of the person’s choice.

8 “(d)(1) This subsection applies only with respect to
9 a State or private employer.

10 “(2)(A) The district courts of the United States may
11 require the State or private employer, as the case may
12 be—

13 “(i) to comply with the provisions of this chap-
14 ter;

15 “(ii) to compensate the person for any loss of
16 wages or benefits suffered by reason of such employ-
17 er’s failure to comply with the provisions of this
18 chapter; and

19 “(iii) to pay, in addition to the compensation
20 paid under clause (ii), the person an amount equal
21 to such compensation as liquidated damages, if the
22 court determines that the employer’s failure to com-
23 ply with the provisions of this chapter was willful.

24 “(B) Any compensation and payment under clauses
25 (ii) and (iii) of subparagraph (A) shall be in addition to,

1 and shall not be deemed to diminish, any of the other
2 rights and benefits provided for in this chapter.

3 “(3)(A) No fees or court costs shall be charged or
4 taxed against any person claiming rights or benefits under
5 this chapter.

6 “(B) In any action or proceeding to enforce a provi-
7 sion of this chapter by a person described in paragraph
8 (2) who obtained private counsel for such action or pro-
9 ceeding, the court, in its discretion, may award any such
10 person who prevails in such action or proceeding a reason-
11 able attorney’s fee, expert witness fees, and other litiga-
12 tion expenses.

13 “(4) The court may use its full equity powers, includ-
14 ing temporary or permanent injunctions and temporary
15 restraining orders, to vindicate fully the rights or benefits
16 of persons under this chapter.

17 “(5) An action under this chapter may be initiated
18 only by a person claiming rights or benefits under this
19 chapter, not by an employer, prospective employer, or
20 other entity with obligations under this chapter.

21 “(6) In any action under this chapter, only the em-
22 ployer shall be deemed a necessary party respondent.

23 “(7) No State statute of limitations shall apply to any
24 proceedings under this chapter.

1 “(8) A State shall be subject to the same remedies,
2 including prejudgment interest, as may be imposed upon
3 any private employer under this section.

4 “(e)(1) This subsection applies only with respect to
5 the Federal Government as employer.

6 “(2)(A) If the Merit Systems Protection Board con-
7 cludes that the Federal Government, as employer, has
8 failed to comply with the provisions of this chapter or that
9 the Director of the Office of Personnel Management has
10 not met an obligation set forth in section 4314, the Board
11 shall enter an order specifically requiring the employing
12 agency or the Director to comply with such provisions and
13 to compensate such person for any loss of wages or bene-
14 fits suffered by reason of the employing agency’s or the
15 Director’s unlawful action.

16 “(B) Any such compensation shall be in addition to
17 and shall not be deemed to diminish any of the other
18 rights or benefits provided for by this chapter.

19 “(3)(A) A claimant under this chapter may petition
20 the United States Court of Appeals for the Federal Circuit
21 to review a decision of the Merit Systems Protection
22 Board denying such claimant the relief sought, in whole
23 or in part, subject to the conditions and in accordance
24 with the procedures set forth in section 7703 of title 5.

1 “(B) The Secretary and the Special Counsel shall not
2 represent persons with respect to review of decisions of
3 the Merit Systems Protection Board under this chapter
4 in the United States Court of Appeals for the Federal Cir-
5 cuit or the Supreme Court.

6 “(C) If a person seeks such judicial review, or in any
7 case in which a person is involved in the Board’s decision
8 is being appealed by another party, such person may be
9 represented by counsel of the person’s choice.

10 **“§ 4323. Conduct of investigation; subpoenas**

11 “(a) In carrying out investigations under this chap-
12 ter, the Secretary’s duly authorized representatives shall
13 at all reasonable times have access to, for the purpose of
14 examination, and the right to copy and receive, any docu-
15 ments of any person or employer.

16 “(b) Except as provided in section 4322(a)(2), in car-
17 rying out investigations under this chapter, the Secretary
18 may require by subpoena the attendance and testimony
19 of witnesses and the production of documents relating to
20 any matter under investigation. In case of disobedience of
21 the subpoena or contumacy and on request of the Sec-
22 retary, the Attorney General may apply to any district
23 court of the United States in whose jurisdiction such dis-
24 obedience or contumacy occurs for an order enforcing the
25 Secretary’s subpoena.

12 “§ 4331. Regulations

18 “(b)(1) The Director of the Office of Personnel Man-
19 agement (in consultation with the Secretary and the
20 Secretary of Defense) may prescribe regulations imple-
21 menting the provisions of this chapter with regard to the
22 application of this chapter to the Federal Government as
23 employer. Such regulations shall be consistent with the
24 regulations pertaining to the States and private employers,
25 except that employees of the Federal Government may be

1 given greater or additional rights. Nothing in this sub-
2 section constitutes authority for the Director to prescribe
3 any matter for which any regulation may be prescribed
4 under paragraph (2).

5 “(2) Regulations may be prescribed—

6 “(A) by the Merit Systems Protection Board to
7 carry out its responsibilities under this chapter; and

8 “(B) by the Office of Special Counsel to carry
9 out its responsibilities under this chapter.

10 **“§ 4332. Reports**

11 “The Secretary shall, after consultation with the At-
12 torney General and the Special Counsel referred to in sec-
13 tion 4322(b)(2) and no later than February 1, 1995, and
14 each February 1 thereafter, transmit to the Congress, a
15 report containing the following matters for the fiscal year
16 ending before such February 1:

17 “(1) The number of cases reviewed by the De-
18 partment of Labor under this chapter during the fis-
19 cal year for which the report is made.

20 “(2) The number of cases referred to the Attor-
21 ney General or the Special Counsel pursuant to sec-
22 tion 4322(c)(1) or 4322(c)(2), respectively, during
23 such fiscal year.

1 “(3) The number of pleadings filed by the At-
2 torney General pursuant to section 4322(c)(1) dur-
3 ing such fiscal year.

4 “(4) The nature and status of each case re-
5 ported on pursuant to paragraph (1), (2), or (3).

6 “(5) An indication of whether there are any ap-
7 parent patterns of violation of the provisions of this
8 chapter, together with an explanation thereof.

9 “(6) Recommendations for administrative or
10 legislative action that the Secretary, the Attorney
11 General, or the Special Counsel considers necessary
12 for the effective implementation of this chapter, in-
13 cluding any action that could be taken to encourage
14 mediation, before claims are filed under this chapter,
15 between employers and persons seeking employment
16 or reemployment.

17 **“§ 4333. Outreach**

18 “The Secretary, the Secretary of Defense, and the
19 Secretary of Veterans Affairs shall take such actions as
20 such Secretaries determine are appropriate to inform per-
21 sons entitled to rights and benefits under this chapter and
22 employers of the rights, benefits, and obligations of such
23 persons and such employers under this chapter.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) AMENDMENTS TO TITLE 38.—The tables of
 2 chapters at the beginning of title 38, United States
 3 Code, and the beginning of part III of such title are
 4 each amended by striking out the item relating to
 5 chapter 43 and inserting in lieu thereof the follow-
 6 ing:

**“43. Employment and reemployment rights of members of
 the uniformed services 4301”.**

7 (2) AMENDMENT TO TITLE 5.—(A) Section
 8 1204(a)(1) of title 5, United States Code, is amend-
 9 ed by striking out “section 4323” and inserting in
 10 lieu thereof “chapter 43”.

11 (B) Subchapter II of chapter 35 of such title is
 12 repealed.

13 (C) The table of sections for chapter 35 of such
 14 title is amended by striking out the heading relating
 15 to subchapter II of such chapter and the item relat-
 16 ing to section 3551 of such chapter.

17 (3) AMENDMENT TO TITLE 10.—Section
 18 706(c)(1) of title 10, United States Code, is amend-
 19 ed by striking out “section 4321” and inserting in
 20 lieu thereof “chapter 43”.

21 (c) AMENDMENTS TO TITLE 28.—Section 631 of title
 22 28, United States Code, is amended—

23 (1) by striking out subsection (j);

1 (2) by redesignating subsections (k) and (l) as
2 subsections (j) and (k), respectively; and

3 (3) in subsection (j), as redesignated by para-
4 graph (2), by striking out “under the terms of” and
5 all that follows through “section,” the first place it
6 appears and inserting in lieu thereof “under chapter
7 43 of title 38,”.

8 **SEC. 3. EXEMPTION FROM MINIMUM SERVICE REQUIRE-**
9 **MENTS.**

10 Section 5303A(b)(3) of title 38, United States Code,
11 is amended—

12 (1) by striking out “or” at the end of subpara-
13 graph (E);

14 (2) by striking out the period at the end of sub-
15 paragraph (F) and inserting in lieu thereof “; or”;
16 and

17 (3) by adding at the end thereof the following
18 new subparagraph:

19 “(G) to benefits under chapter 43 of this title.”.

20 **SEC. 4. THRIFT SAVINGS PLAN.**

21 (a) IN GENERAL.—(1) Title 5, United States Code,
22 is amended by inserting after section 8432a the following:

23 **“§ 8432b. Contributions of persons who perform mili-**
24 **tary service**

25 “(a) This section applies to any employee who—

1 “(1) separates or enters leave-without-pay sta-
2 tus in order to perform military service; and

3 “(2) is subsequently restored to or reemployed
4 in a position which is subject to this chapter, pursu-
5 ant to chapter 43 of title 38.

6 “(b)(1) Each employee to whom this section applies
7 may contribute to the Thrift Savings Fund, in accordance
8 with this subsection, an amount not to exceed the amount
9 described in paragraph (2).

10 “(2) The maximum amount which an employee may
11 contribute under this subsection is equal to—

12 “(A) the contributions under section 8432(a)
13 which would have been made, over the period begin-
14 ning on date of separation or commencement of
15 leave-without-pay status (as applicable) and ending
16 on the day before the date of restoration or reem-
17 ployment (as applicable); reduced by

18 “(B) any contributions under section 8432(a)
19 actually made by such employee over the period de-
20 scribed in subparagraph (A).

21 “(3) Contributions under this subsection—

22 “(A) shall be made at the same time and in the
23 same manner as would any contributions under sec-
24 tion 8432(a);

1 “(B) shall be made over the period of time
2 specified by the employee under paragraph (4)(B);
3 and

4 “(C) shall be in addition to any contributions
5 then actually being made under section 8432(a).

6 “(4) The Executive Director shall prescribe the time,
7 form, and manner in which an employee may specify—

8 “(A) the total amount such employee wishes to
9 contribute under this subsection with respect to any
10 particular period referred to in paragraph (2)(B);
11 and

12 “(B) the period of time over which the em-
13 ployee wishes to make contributions under this sub-
14 section.

15 The employing agency may place a maximum limit on the
16 period of time referred to in subparagraph (B), which can-
17 not be shorter than two times the period referred to in
18 paragraph (2)(B) and not longer than four times such pe-
19 riod.

20 “(c) If an employee makes contributions under sub-
21 section (b), the employing agency shall make contributions
22 to the Thrift Savings Fund on such employee’s behalf—

23 “(1) in the same manner as would be required
24 under section 8432(c)(2) if the employee contribu-
25 tions were being made under section 8432(a); and

1 “(2) disregarding any contributions then actu-
2 ally being made under section 8432(a) and any
3 agency contributions relating thereto.

4 “(d) An employee to whom this section applies is enti-
5 tled to have contributed to the Thrift Savings Fund on
6 such employee’s behalf an amount equal to—

7 “(1) 1 percent of such employee’s basic pay (as
8 determined under subsection (e)) for the period re-
9 ferred to in subsection (b)(2)(B); reduced by

10 “(2) any contributions actually made on such
11 employee’s behalf under section 8432(c)(1) with re-
12 spect to the period referred to in subsection
13 (b)(2)(B).

14 “(e) For purposes of any computation under this sec-
15 tion, an employee shall, with respect to the period referred
16 to in subsection (b)(2)(B), be considered to have been paid
17 at the rate which would have been payable over such pe-
18 riod had such employee remained continuously employed
19 in the position which such employee last held before sepa-
20 rating or entering leave-without-pay status to perform
21 military service.

22 “(f)(1) The employing agency shall be required to pay
23 lost earnings on contributions made pursuant to sub-
24 sections (c) and (d). Such earnings shall be calculated
25 retroactively to the date the contribution would have been

1 made had the employee not separated or entered leave
2 without pay status to perform military service.

3 “(2) Procedures for calculating and crediting the
4 earnings payable pursuant to paragraph (1) shall be pre-
5 scribed by the Executive Director.

6 “(g) Amounts paid under subsection (c), (d), or (f)
7 shall be paid—

8 “(1) by the agency to which the employee is re-
9 stored or in which such employee is reemployed;

10 “(2) from the same source as would be the case
11 under section 8432(e) with respect to sums required
12 under section 8432(c); and

13 “(3) within the time prescribed by the Execu-
14 tive Director.

15 “(h)(1) For purposes of section 8432(g), in the case
16 of an employee to whom this section applies—

17 “(A) a separation from civilian service in order
18 to perform the military service on which the employ-
19 ee’s restoration or reemployment rights are based
20 shall be disregarded; and

21 “(B) such employee shall be credited with a pe-
22 riod of civilian service equal to the period referred
23 to in subsection (b)(2)(B).

24 “(2)(A) An employee to whom this section applies
25 may elect, for purposes of section 8433(d), or paragraph

1 (1) or (2) of section 8433(h), as the case may be, to have
2 such employee's separation (described in subsection
3 (a)(1)) treated as if it had never occurred.

4 “(B) An election under this paragraph shall be made
5 within such period of time after restoration or reemploy-
6 ment (as the case may be) and otherwise in such manner
7 as the Executive Director prescribes.

8 “(i) The Executive Director shall prescribe regula-
9 tions to carry out this section.”.

10 (2) The table of sections for chapter 84 of title 5,
11 United States Code, is amended by inserting after the
12 item relating to section 8432a the following:

“8432b. Contributions of persons who perform military service.”.

13 (b) PRESERVATION OF CERTAIN RIGHTS.—(1) Sec-
14 tion 8433(d) of title 5, United States Code, is amended
15 by striking “subsection (e).” and inserting “subsection (e),
16 unless an election under section 8432b(h)(2) is made to
17 treat such separation for purposes of this subsection as
18 if it had never occurred.”.

19 (2) Paragraphs (1) and (2) of section 8433(h) are
20 each amended by striking the period at the end and insert-
21 ing “, or unless an election under section 8432b(h)(2) is
22 made to treat such separation for purposes of this para-
23 graph as if it had never occurred.”.

24 (c) ELECTION TO RESUME REGULAR CONTRIBU-
25 TIONS UPON RESTORATION OR REEMPLOYMENT.—Sec-

1 tion 8432 of title 5, United States Code, is amended by
2 adding at the end the following:

3 “(i)(1) This subsection applies to any employee—

4 “(A) to whom section 8432b applies; and

5 “(B) who, during the period of such employee’s
6 absence from civilian service (as referred to in sec-
7 tion 8432b(b)(2)(B))—

8 “(i) is eligible to make an election de-
9 scribed in subsection (b)(1); or

10 “(ii) would be so eligible but for having
11 either elected to terminate individual contribu-
12 tions to the Thrift Savings Fund within 2
13 months before commencing military service or
14 separated in order to perform military service.

15 “(2) The Executive Director shall prescribe regula-
16 tions to ensure that any employee to whom this subsection
17 applies shall, within a reasonable time after being restored
18 or reemployed (in the manner described in section
19 8432b(a)(2)), be afforded the opportunity to make, for
20 purposes of this section, any election which would be al-
21 lowable during a period described in subsection
22 (b)(1)(A).”.

23 (d) APPLICABILITY TO EMPLOYEES UNDER CSRS.—
24 Section 8351(b) of title 5, United States Code, is amended
25 by adding at the end the following:

1 “(11) In applying section 8432b to an employee con-
2 tributing to the Thrift Savings Fund after being restored
3 to or reemployed in a position subject to this subchapter,
4 pursuant to chapter 43 of title 38—

5 “(A) any reference in such section to contribu-
6 tions under section 8432(a) shall be considered a
7 reference to employee contributions under this sec-
8 tion;

9 “(B) the contribution rate under section
10 8432b(b)(2)(A) shall be the maximum percentage al-
11 lowable under subsection (b)(2) of this section; and

12 “(C) subsections (c) and (d) of section 8432b
13 shall be disregarded.”.

14 (e) EFFECTIVE DATE; APPLICABILITY.—This section
15 and the amendments made by this section—

16 (1) shall take effect on the date of enactment
17 of this Act; and

18 (2) shall apply to any employee whose release
19 from military service, discharge from hospitalization,
20 or other similar event making the individual eligible
21 to seek restoration or reemployment under chapter
22 43 of title 38, United States Code, occurs on or
23 after August 2, 1990.

24 (f) RULES FOR APPLYING AMENDMENTS TO EM-
25 PLOYEES RESTORED OR REEMPLOYED BEFORE EFFEC-

1 TIVE DATE.—In the case of any employee (described in
2 subsection (e)(2)) who is reemployed or restored (in the
3 circumstances described in section 8432b(a) of title 5,
4 United States Code, as amended by this section) before
5 the date of enactment of this Act, the amendments made
6 by this section shall apply to such employee, in accordance
7 with their terms, subject to the following:

8 (1) The employee shall be deemed not to have
9 been reemployed or restored until—

10 (A) the date of enactment of this Act, or

11 (B) the first day following such employee's
12 reemployment or restoration on which such em-
13 ployee is or was eligible to make an election re-
14 lating to contributions to the Thrift Savings
15 Fund,

16 whichever occurs or occurred first.

17 (2) If the employee changed agencies during the
18 period between date of actual reemployment or res-
19 toration and the date of enactment of this Act, the
20 employing agency as of such date of enactment shall
21 be considered the reemploying or restoring agency.

22 (3)(A) For purposes of any computation under
23 section 8432b of such title, pay shall be determined
24 in accordance with subsection (e) of such section, ex-
25 cept that, with respect to the period described in

1 subparagraph (B), actual pay attributable to such
2 period shall be used.

3 (B) The period described in this subparagraph
4 is the period beginning on the first day of the first
5 applicable pay period beginning on or after the date
6 of the employee's actual reemployment or restoration
7 and ending on the day before the date determined
8 under paragraph (1).

9 (4) Deem section 8432b(b)(2)(A) of such title
10 to be amended by striking “ending on the day before
11 the date of restoration or reemployment (as applica-
12 ble)” and inserting “ending on the date determined
13 under section 4(f)(1) of the Uniformed Services Em-
14 ployment and Reemployment Rights Act of 1993”.

15 **SEC. 5. TECHNICAL AMENDMENT.**

16 Section 9(d) of Public Law 102–16 (105 Stat. 55)
17 is amended by striking out “Act” the first place it appears
18 and inserting in lieu thereof “section”.

19 **SEC. 6. TRANSITION RULES AND EFFECTIVE DATES.**

20 (a) REEMPLOYMENT.—(1) Except as otherwise pro-
21 vided in this Act, the amendments made by this Act shall
22 be effective with respect to reemployments initiated on or
23 after the first day after the 60-day period beginning on
24 the date of enactment of this Act.

1 (2) The provisions of chapter 43 of title 38, United
2 States Code, in effect on the day before such date of enact-
3 ment, shall continue to apply to reemployments initiated
4 before the end of such 60-day period.

5 (3) In determining the number of years of service
6 that may not be exceeded in an employee-employer rela-
7 tionship with respect to which a person seeks reemploy-
8 ment under chapter 43 of title 38, United States Code,
9 as in effect before or after the date of enactment of this
10 Act, there shall be included all years of service without
11 regard to whether the periods of service occurred before
12 or after such date of enactment unless the period of serv-
13 ice is exempted by the chapter 43 that is applicable, as
14 provided in paragraphs (1) and (2), to the reemployment
15 concerned.

16 (4) A person who initiates reemployment under chap-
17 ter 43 of title 38, United States Code, during or after the
18 60-day period beginning on the date of enactment of this
19 Act and whose reemployment is made in connection with
20 a period of service in the uniform services that was initi-
21 ated before the end of such period shall be deemed to have
22 satisfied the notification requirement of section
23 4312(a)(1) of title 38, United States Code, as provided
24 in the amendments made by this Act, if the person com-
25 plied with any applicable notice requirement under chapter

1 43, United States Code, as in effect on the day before
2 the date of enactment of this Act.

3 (b) DISCRIMINATION.—The provisions of section
4 4311 of title 38, United States Code, as provided in the
5 amendments made by this Act, and the provisions of sub-
6 chapter III of chapter 43 of such title, as provided in the
7 amendments made by this Act, that are necessary for the
8 implementation of such section 4311 shall become effec-
9 tive on the date of enactment of this Act.

10 (c) INSURANCE.—(1) Except as provided in para-
11 graph (2), the provisions of section 4315(c) of title 38,
12 United States Code, as provided in the amendments made
13 by this Act, concerning insurance coverage shall become
14 effective on the date of enactment of this Act.

15 (2) A person on active duty on the date of enactment
16 of this Act, or a family member or personal representative
17 of such person, may, after the date of enactment of this
18 Act, elect to reinstate or continue insurance coverage as
19 provided in such section 4315. If such an election is made,
20 insurance coverage shall remain in effect for the remaining
21 portion of the 18-month period that began on the date
22 of such person's separation from civilian employment.

23 (d) DISABILITY.—(1) Section 4313(a)(3) of chapter
24 43 of title 38, United States Code, as provided in the

1 amendments made by this Act, shall apply to
2 reemployments initiated on or after August 1, 1990.

3 (2) Effective as of August 1, 1990, section 4307 of
4 title 38, United States Code (as in effect on the date of
5 enactment of this Act), is hereby repealed, and the table
6 of sections at the beginning of chapter 43 of such title
7 (as in effect on the date of enactment of this Act) is
8 amended by striking out the item relating to section 4307.

9 (e) REPORTS.—The reports made by the Secretary
10 of Labor pursuant to section 4332 of title 38, United
11 States Code, as provided in the amendments made by this
12 Act, shall be made with respect to cases pertaining to
13 chapter 43 of such title without regard to whether a case
14 originated under such chapter before, on, or after the date
15 of enactment of this Act.

16 (f) PREVIOUS ACTIONS.—Except as otherwise pro-
17 vided, the amendments made by this Act do not affect
18 reemployments that were initiated, rights, benefits, and
19 duties that matured, penalties that were incurred, and
20 proceedings that were begun before the end of the 60-day
21 period referred to in subsection (a).

Passed the House of Representatives May 4, 1993.

Attest: DONNALD K. ANDERSON,
Clerk.

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